



ENTERED
11/09/2016

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: BLACK ELK ENERGY OFFSHORE OPERATIONS, LLC Debtor(s)	§ § § § §	CASE NO: 15-34287 CHAPTER 11
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MEMORANDUM OPINION

This Memorandum Opinion resolves Shamrock Management, LLC's motion for relief from the automatic stay at ECF No. 967. In its motion, Shamrock seeks relief from the stay to file a lawsuit against the Platinum Parties¹ in Louisiana state court. On July 28, 2016, the Court held a hearing on Shamrock's motion. The Court instructed Shamrock to file a new proposed pleading that set forth allegations constituting a direct cause of action against the Platinum Parties. (ECF No. 1243 at 35). The Court required that the pleading contain sufficient information that it would satisfy Rule 9 of the Federal Rules of Civil Procedure². (*Id.* at 33).

Jurisdiction and Authority

Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1334. Determining whether an asset is estate property is a core matter under 28 U.S.C. § 157. *In re Velo Holdings, Inc.*, 475 B.R. 367, 386 (Bankr. S.D.N.Y. 2012); *Pension Benefit Guar. Corp. v. Cont'l Airlines, Inc. (In re Cont'l Airlines, Inc.)*, 138 B.R. 442, 445 (D. Del. 1992).

Analysis

Although the proposed Verified First Supplemental and Amending Petition filed at ECF No. 1278-1 sets forth allegations of substantial fraudulent conduct by the Platinum Parties, the

¹ Platinum Partners Value Arbitrage Fund LP; PPVA Black Elk (US) Corp.; PPVA Black Elk (Equity) LLC; and PPVA Black Elk (Investor) LLC (the "Platinum Parties").

² Rule 9 does not apply to the pleadings because they are filed in state court. The purpose of the Rule 9 requirement was to allow the Court to apply Fifth Circuit law regarding ownership of the claims.

vast majority Shamrock's injury from the alleged fraud resulted from generalized injury to Black Elk. It is the estate, not Shamrock, that has standing to assert these claims. *Matter of Educators Grp. Health Trust*, 25 F.3d 1281, 1284 (5th Cir. 1994). The alleged improper payments and funds diversions, if true, would have directly affected Black Elk and *all* of its (now unpaid) creditors. The fact that Shamrock was one of those creditors does not give it the type of direct injury for which it can sue under Fifth Circuit law as set forth in *Educators*. *Id.*

Nevertheless, Shamrock has alleged some facts that resulted in a direct injury to Shamrock. Shamrock alleged that Black Elk—at Platinum's direction—fraudulently promised payments that induced Shamrock to continue to provide goods and services to Black Elk. The fraud allegations are contained in paragraphs 47, 49, 51, and 53 of the Verified First Supplemental and Amending Petition. (ECF No. 1278-1 at 15-17). No fraud directed at Shamrock is alleged to have occurred with respect to goods or services provided prior to January 29, 2014. Shamrock alleges that on January 29, 2014, Mr. Hoffman sent an email to Shamrock stating that Black Elk "will get [Shamrock] payment ASAP", when in fact Black Elk (acting under Platinum's control and direction) had no intention of paying Shamrock. Shamrock alleges that Hoffman sent this email at Platinum's direction. Similarly, on February 3, 2014, Mr. Larin told Shamrock that "[w]e are working on two events that would bring in the liquidity needed to bring [Shamrock's] account back up to speed. We should know more later in the week." (*Id.* at 15). This email was followed by a February 7, 2014, email requesting from Shamrock an accounts receivable aging. (*Id.* at 16). Presumably, this type of an email would help establish that Black Elk actually intended to pay Shamrock. The allegations, if proven, would demonstrate that Mr. Larin sent these two emails at Platinum's direction at a time when Platinum

had no intention of allowing the proceeds from the events to be used to pay Shamrock or other vendors.

On February 17, 2014 Mr. Fuerst allegedly sent an email promising payment of invoices that were over 90-days old. The promise was that the payments would be made on February 28, 2014. Again, Shamrock alleges that Black Elk, acting at Platinum's direction, had no intention of making the February 28, 2014 payment. (*Id.* at 17).

Shamrock alleges that, in reliance on these false statements, Shamrock continued to provide goods and services to Black Elk. In its complaint, Shamrock does not identify the extent of the goods and services provided after February 3, 2014. Shamrock acknowledges that it received a \$355,848.71 payment on March 27, 2014 from Black Elk. To the extent that Shamrock provided in excess of \$355,848.71 in goods and services after February 3, 2014, it has stated a case of direct injury from the Platinum Defendant's fraudulent conduct.

The balance of the allegations in the petition set forth a claim of injury to Black Elk (resulting in an injury to Shamrock), but not a direct injury to Shamrock.

Shamrock filed its proof of claim in the Black Elk bankruptcy case, under penalty of perjury, on August 13, 2015. On September 17, 2015, Shamrock filed its amended proof of claim. Attached to the proof of claim are 860 pages of invoices. The amended proof of claim alleges that Black Elk owes \$982,443.77 "plus punitive damages, attorney fees and legal interest" to Shamrock. The following invoices reflect goods and services delivered after February 3, 2014:

Invoice Number	Date of Goods and Services	Amount
0105282-IN	February 13-15, 2014	\$867.44
0105302-IN	February 12-18, 2014*	\$3,036.04
0105304-IN	February 13-19, 2014 [Revised by 1015317-IN]	\$0.00
0105317-IN	February 14-20, 2014*	\$4,509.96
0105338-IN	February 13-19, 2014	\$6,489.00
0105341-IN	February 12-18, 2014	\$5,969.00
0105346-IN	February 11-17, 2014	\$5,460.00
0105361-IN	February 12-18, 2014	\$5,005.56
0105456-IN	February 13-19, 2014*	\$5,518.00
0105459-IN	February 13-17, 2014	\$3,180.00
0105511-IN	February 4-19, 2014	\$4,497.58
0105590-IN	February 20-27, 2014	\$3,006.64
0105591-IN	February 13-27, 2014	\$3,036.04
0105603-IN	February 19-26, 2014	\$4,559.52
0105612-IN	February 17-26, 2014	\$3,531.72
0105628-IN	February 13-14, 20-27, 2014	\$4,939.48
0105657-IN	February 3, 20-27, 2014	\$3,386.86
0105674-IN	February 12-18, 2014	\$6,930.00
0105696-IN	February 11-13, 19-26, 2014	\$7,062.00
0105698-IN	February 20-27, 2014	\$5,544.00
0105720-IN	February 4-5, 2014 (Prorated Rentals)	\$286.22
0105723-IN	February 21, 2014	\$2,340.00
0105822-IN	February 20-27, 2014	\$4,770.00
0105837-IN	February 20-27, 2014	\$5,952.00
0105883-IN	February 19-26, 2014	\$5,481.00
0105887-IN	February 18-25, 2014	\$5,760.00
0105888-IN	February 17-26, 2014	\$6,667.50
0105975-IN	February 13-19, 2014	\$4,929.00
0105994-IN	February 4-16, 2014*	\$5,525.00
0106041-IN	February 27 - March 5, 2014	\$2,775.36
0106047-IN	February 26 - March 5, 2014	\$4,864.00
0106055-IN	February 23 - March 5, 2014	\$3,865.68
0106093-IN	February 27 - March 5, 2014	\$3,285.20
0106100-IN	February 27 - March 3, 2014	\$1,748.16
0106123-IN	February 13 - March 5, 2014	\$5,185.68
0106129-IN	February 26 - March 4, 2014	\$3,230.00
0106137-IN	February 13 - March 5, 2014	\$3,072.72
0106143-IN	February 26 - March 4, 2014	\$2,955.28
0106152-IN	February 26 - March 4, 2014	\$3,234.80
0106183-IN	March 1-2, 2014	\$1,152.00
0106259-IN	February 27 - March 3, 2014	\$1,377.50
0106123-IN	Duplicate Claim	\$0.00
0106260-IN	February 9, 2014 - March 4, 2014	\$5,999.10
0106263-IN	March 4, 2014	\$291.00
0106280-IN	February 19-22, 2014	\$5,470.00

0106281-IN	March 2, 2014	\$2,010.00
0106282-IN	February 24-25, 2014	\$2,850.00
0106286-IN	February 24-25, 2014	\$1,275.25
0106307-IN	February 6 - March 5, 2014	\$3,864.00
0106387-IN	March 6-13, 2014	\$2,841.44
0106388-IN	March 6-13, 2014	\$3,105.76
0106401-IN	March 8-11, 2014	\$2,280.00
0106404-IN	March 5-7, 2014	\$1,710.00
0106413-IN	March 9-11, 2014	\$1,635.48
0106426-IN	March 6-13, 2014	\$3,438.00
0106434-IN	March 5-12, 2014	\$3,915.24
0106444-IN	March 6-13, 2014	\$4,906.88
0106449-IN	March 5-11, 2014	\$2,378.88
0106463-IN	March 6-13, 2014	\$2,907.52
0106467-IN	March 5-12, 2014	\$5,185.68
0106481-IN	March 5-10, 2014	\$1,505.52
0106563-IN	March 5-12, 2014	\$5,696.00
0106610-IN	March 4-11, 2014	\$5,090.80
0106672-IN	February 6-2, 2014*	\$3,102.01
0106702-IN	February 13, 2014	\$8,416.00
0106703-IN	March 15-18, 2014	\$2,630.81
0106718-IN	March 12-18, 2014	\$3,717.00
0106730-IN	March 12-18, 2014	\$4,088.70
0106752-IN	February 26 - March 19, 2014	\$2,788.20
0106759-IN	February 24 - March 18, 2014	\$892.08
0106770-IN	February 26 - March 18, 2014	\$2,850.16
0106776-IN	February 26 - March 18, 2014	\$4,283.17
0106798-IN	March 16 -19, 2014	\$5,940.00
0106803-IN	March 13-19, 2014	\$3,233.79
0106925-IN	March 13-19, 2014	\$5,292.00
0106928-IN	February 24 - March 18, 2014	\$6,477.00
0106942-IN	February 25 - March 19, 2014	\$6,014.00
0106946-IN	March 15 - 19, 2014	\$3,286.00
0107065-IN	March 20 - 27, 2014	\$2,940.56
0107066-IN	March 20 - 21, 2014	\$892.08
0107076-IN	March 19 - 26, 2014	\$4,063.92
0107087-IN	March 16 - 26, 2014	\$4,497.57
0107097-IN	March 19 - 20, 2014	\$1,288.56
0107101-IN	March 20 - 23, 2014	\$446.04
0107112-IN	March 16 - 26, 2014	\$3,067.02
0107115-IN	March 15 - 27, 2014	\$2,912.12
0107117-IN	March 20 - 24, 2014	\$18,920.00
0107218-IN	Februray 19 - 28, 2014	\$7,072.00
0107225-IN	March 20 - 27, 2014	\$5,544.00
0107242-IN	March 20 - 27, 2014	\$4,664.00
0107244-IN	March 20 - 27, 2014	\$6,534.00
0107248-IN	March 19 - 27, 2014	\$7,192.00

0107252-IN	March 16 - 25, 2014	\$6,286.50
0107262-IN	March 19 - 22, 2014	\$1,584.00
0107296-IN	March 11, 2014	\$148.68
0107324-IN	March 7, 2014	\$101.76
0107365-IN	February 4-11, 2014	\$960.00
0107398-IN	March 27 - April 2, 2014	\$3,438.00
0107407-IN	March 25 - April 1, 2014	\$5,462.50
0107411-IN	March 26 - April 1, 2014	\$4,757.76
0107412-IN	March 27 - April 2, 2014	\$3,122.28
0107431-IN	March 21 - April 2, 2014	\$5,092.78
0107440-IN	March 11 - 31, 2014	\$396.48
0107463-IN	March 13 - April 2, 2014	\$2,973.60
0107468-IN	March 26 - April 1, 2014	\$5,520.24
0107501-IN	March 13 - April 2, 2014	\$5,018.40
0107505-IN	March 27 - 31, 2014	\$278.80
0107641-IN	March 25 - 31, 2014	\$4,919.20
0107643-IN	April 5 - 6, 2014	\$7,442.00
0107684-IN	March 24 - 25, 2014*	\$360.00
0107685-IN	March 6 - 25, 2014	\$2,760.00
0107707-IN	April 3 - 10, 2014	\$2,841.44
0107708-IN	April 3 - 10, 2014	\$3,590.80
0107716-IN	April 1 - 8, 2014	\$4,275.00
0107720-IN	April 2 - 9, 2014	\$4,509.96
0107721-IN	April 2 - 10, 2014	\$3,308.13
0107757-IN	April 3 - 10, 2014	\$4,853.22
0107762-IN	April 2 - 9, 2014	\$5,074.16
0107781-IN	April 3 - 10, 2014	\$4,906.88
0107806-IN	April 3 - 10, 2014	\$2,907.52
0107943-IN	April 7, 2014	\$900.00
0107948-IN	April 1 - 8, 2014	\$4,976.40
0107957-IN	February 19, 2014	\$524.40
0108053-IN	April 10 - 16, 2014	\$4,452.00
0108063-IN	March 27 - April 16, 2014	\$2,695.26
0108077-IN	April 9 - 15, 2014	\$4,460.40
0108104-IN	April 10 - 16, 2014	\$5,292.00
0108105-IN	March 27 - April 16, 2014	\$8,712.00
0108143-IN	March 23 - April 15, 2014	\$3,128.98
0108209-IN	March 23 - April 15, 2014	\$4,588.43
0105245-IN	April 20, 2014	\$1,670.00
0108301-IN	March 31 - April 1, 2014	\$4,453.00
0108310-IN	March 8 - 9, 2014	\$3,453.31
0108323-IN	March 22 - April 8, 2014	\$16,454.43
0108438-IN	April 17 - 24, 2014	\$2,841.44
0108440-IN	April 16 - 24, 2014	\$2,726.24
0108450-IN	April 16 -23, 2014	\$4,410.84
0108460-IN	April 16 - 23, 2014	\$4,452.14
0108486-IN	April 17 - 24, 2014	\$6,336.00

0108487-IN	April 16 - 24, 2014	\$5,733.00
0108511-IN	April 16 - 23, 2014	\$3,036.04
0108552-IN	April 17 -24, 2014	\$4,644.00
0108599-IN	April 21 - 25, 2014	\$5,414.50
0108669-IN	April 27, 2014	\$185.71
0108671-IN	April 27, 2014	\$392.85
0108689-IN	April 21 - 23, 2014	\$3,430.00
0108693-IN	April 23 - 27, 2014	\$6,595.00
0108717-IN	April 4 - 5, 2014	\$750.00
0108786-IN	February 4, 2014	\$360.95
0108803-IN	April 24 - 30, 2014	\$3,208.80
0108811-IN	April 8 - 28, 2014	\$4,465.00
0108816-IN	April 23 -29, 2014	\$4,460.40
0108817-IN	April 24 - 30, 2014	\$3,382.47
0108858-IN	April 24 - 30, 2014	\$4,336.92
0108862-IN	April 24 - 29, 2014	\$4,460.80
0108888-IN	April 10 - 30, 2014	\$4,739.60
0108905-IN	April 30, 2014	\$1,290.00
0108920-IN	April 10 - 30, 2014	\$2,808.40
0108922-IN	April 1 - 3, 2014	\$3,190.00
0108947-IN	April 10 - 22, 2014	\$11,810.00
0109080-IN	April 22 - 29, 2014	\$5,140.75
0109151-IN	May 1 -2, 2014	\$1,800.00
0109152-IN	May 3, 2014	\$675.00
0109153-IN	May 4, 2014	\$1,275.00
0109155-IN	May 3, 2014	\$1,189.44
0109161-IN	May 1 - 8, 2014	\$2,841.44
0109163-IN	May 3 - 8, 2014	\$2,444.80
0109172-IN	April 29 - May 6, 2014	\$4,702.50
0109175-IN	April 30 - May 7, 2014	\$4,609.08
0109176-IN	April 30 - May 7, 2014	\$3,642.66
0109228-IN	May 1 -8, 2014	\$5,576.00
0109233-IN	May 3 - 8, 2014	\$99.12
0109257-IN	April 29 - May 6, 2014	\$3,304.00
0109261-IN	April 30 - May 7, 2014	\$5,185.68
0109291-IN	May 1 - 4, 2014	\$613.36
0109314-IN	May 7, 2014	\$1,830.00
0109352-IN	March 20 - 25, 2014	\$4,943.40
0109503-IN	March 12, 2014	\$1,020.00
0109509-IN	April 29 - May 6, 2014	\$6,144.18
0109520-IN	March 10 -25, 2014	\$14,240.00
0109577-IN	May 5 - 6, 2014	\$3,432.28
0109596-IN	April 20 - May 13, 2014	\$4,757.76
0109610-IN	May 7 - 11, 2014	\$3,720.96
0109636-IN	May 8 - 14, 2014	\$5,670.00
0109663-IN	May 7 - 13, 2014	\$2,974.08
0109674-IN	March 27 - May 14, 2014	\$4,752.00

0109681-IN	April 24 - May 14, 2014	\$4,558.00
0109740-IN	May 22, 2016	\$656.25
0109820-IN	March 26 - April 22, 2014	\$1,064.00
0109878-IN	May 14 - 21, 2014	\$4,460.40
0109879-IN	April 17, 2014	\$149.68
0109893-IN	May 14 - 15, 2014	\$772.31
0109914-IN	May 15 -22, 2014	\$5,544.00
0109915-IN	May 15 -22, 2014	\$5,940.00
0109949-IN	May 14 - 21, 2014	\$2,912.12
0109956-IN	April 25 - 26, 2014	\$3,905.36
0110019-IN	May 15 -22, 2014	\$4,982.00
0110225-IN	March 1 - 16, 2014	\$6,120.00
0110226-IN	March 17 - 31, 2014	\$7,480.00
0110231-IN	February 5, 2014	\$5,720.00
0110235-IN	April 23 - May 20, 2014	\$1,064.00
0110539-IN	May 2 - 8, 2014	\$10,184.36
0111908-IN	May 21 - June 17, 2014	\$1,266.45
0111934-IN	June 17 - 22, 2014	\$11,128.13
0114233-IN	August 21, 2014	\$581.25
0114246-IN	July 9 - 14, 2014	\$4,917.25
0115965-IN	February 19, 2014	\$1,402.74
0116188-IN	September 18 - 19, 2014	\$1,989.00
0116486-IN	September 25 - 26, 2014	\$4,400.00
Total:		\$816,279.87
*Invoice covers certain good and services provided prior to February 3, 2014. The Court has prorated the invoice accordingly.		

As set forth above, the total Shamrock asserts in its proof of claim against Black Elk for actual damages from failure to pay for goods and services is \$982,443.77. This total includes the credited \$355,848.71 payment Shamrock received on March 27, 2014. This receipt occurred after the alleged fraudulent inducement upon which Shamrock relied when it continued to provide goods and services beyond January 29, 2014. Accordingly, as of February 3, 2014, Shamrock was owed:

Amount owed per proof of claim:	\$982,443.77
Less amounts for work performed after February 3, 2014:	\$816,279.87
Plus amounts received on March 26, 2014:	\$355,848.71
Amount owed at February 3, 2014:	\$522,012.61

Accepting all of the allegations in the Verified First Supplemental and Amending Petition and all of the allegations in the proof of claim, but for the alleged fraudulent statements, Shamrock would be owed \$522,012.61. Further accepting those same allegations, Shamrock is now owed \$982,443.77. Accordingly, but for the alleged fraud, Shamrock's losses with Black Elk would have been \$460,431.16 less:

Amount asserted in proof of claim:	\$982,443.77
Amount owed as of February 3, 2014:	\$522,012.61
Difference:	\$460,431.16

Accordingly, Shamrock has established that the automatic stay should be lifted to allow Shamrock to pursue fraud damages as follows:

1. For amounts advanced on account of fraud;
2. To the extent that the fraud was undertaken by or at the direction of a defendant;
3. With actual damages from the fraud limited to a maximum of \$460,431.16;
4. Plus punitive damages, attorney fees and another amounts as may be allowed by applicable law, but only to the extent that such punitive damages, attorney fees or other amounts pertain to the conduct of a defendant arising on or after February 3, 2014.

Conclusion

The Court will issue an Order consistent with this Memorandum Opinion.

SIGNED **November 9, 2016.**



Marvin Isgur
UNITED STATES BANKRUPTCY JUDGE